

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/613,053 Confirmation No.: 6718
Applicant : Jun Imamura
Filed : July 7, 2003
Group Art Unit : 1638
Examiner : FOX, David T.
For : Protein Involved in Restoration of Cytoplasmic Male Sterility to
Fertility and Gene Encoding the Protein and Gene
Docket No. : 54-05A
Customer No. : 23713

Declaration under 37 CFR 1.132

I, Michael Curtis, declare that:

1. I am a patent attorney with the law offices of Greenlee, Winner and Sullivan, P.C.. I am registered with the United States Patent and Trademark Office, registration number 54,053, and am licensed to practice law in the state of Colorado. I am familiar with the present U.S. Patent Application No. 10/613,053, filed on July 7, 2003, and the sequence listings contained therein.
2. I am also familiar with the foreign, international and prior U.S. patent applications that the current U.S. 10/613,053 application claims priority to, namely Japanese Application 2001-128008 (filed April 25, 2001); Japanese Application 2001-202082 (filed July 3, 2001); Japanese Application 2002-020083 (filed January 29, 2002); PCT Application PCT/JP02/04092 (filed April 24, 2002), and U.S. Patent Application No. 10/451,366 (filed April 24, 2002) which is a national stage application of International Application No. PCT/JP02/04092, and the sequence listings contained within these applications.
3. I am also familiar with U.S. Patent Nos. 7,071,375 and 7,314,971 to Brown et al., and the prior U.S. and international applications these patents claim priority to, namely U.S. Provisional Application 60/305,026 (filed July 12, 2001); U.S. Provisional

Application 60/305,363 (filed July 13, 2001); and U.S. Provisional Application 60/308,736 (filed July 30, 2001). I am also familiar with the sequence listings contained in these applications.

4. On October 3, 2008, I sent a series of sequences from the applications referenced above to Harbor Consulting IP Services, Inc. of Portsmouth, New Hampshire, a company in the business of sequence listing preparation, sequence searching and sequence comparisons, for the purpose of comparing the relative sequence homology of the provided sequences.

5. I instructed Harbor Consulting IP Services, Inc. to determine the sequence homology of the sequences as follows:

Group 1 - the 54-05A application (10/613,053) compared with Brown Patent No. 1 (7,071,375)

- DNA sequences designated as SEQ 1 and SEQ 2 from the 54-05A application (10/613,053) compared with sequences designated as SEQ 32 and SEQ 87 (nucleotides 103,375-105,589) from Brown Patent No. 1 (7,071,375).
- Amino acid sequence designated as SEQ 3 from the 54-05A application with amino acid sequence designated as SEQ 31 from Brown Patent No. 1.

Group 2 - the 54-05A application (10/613,053) compared with Brown Patent No. 2 (7,314,971)

- DNA sequences designated as SEQ 1 and SEQ 2 from the 54-05A application (10/613,053) with sequences designated as SEQ 87 (nucleotides 164,311-174,022; nucleotides 167,079-173,669; and nucleotides 167,079-173,669 with the intron at nucleotides 167,459-167,585 removed) from Brown Patent No. 2 (7,314,971).
- Amino acid sequence designated as SEQ 3 from the 54-05A application with amino acid sequence designated as SEQ 179 from Brown Patent No. 2.

Group 3 - the 54-05A application (10/613,053) compared with the Japanese applications from April 2001 (JP 2001-128008), July 2001 (JP 2001-202082) and January 2002 (JP 2002-020083)

- DNA sequence designated as SEQ 1 from the 54-05A application (10/613,053) with sequences designates as SEQ 1 from each of the three Japanese applications (JP 2001-128008, JP 2001-202082 and JP 2002-020083).
- Sequence designated as SEQ 2 from the 54-05A application with DNA sequences designated as SEQ 2 from each of the three Japanese applications (JP 2001-128008, JP 2001-202082 and JP 2002-020083).
- Amino acid designated as SEQ 3 from the 54-05A application with sequences designated as SEQ 3 from each of the three Japanese applications.

Group 4 - the 54-05A application (10/613,053) compared with the Brown provisional applications (60/305,026; 60/305,363 and 60/308,736)

- Sequence designated as SEQ 1 from the 54-05A application (10/613,053) with sequences designated as the large genomic sequence from both Brown Provisional No. 1 (60/305,026) and Brown Provisional No. 3 (60/308,736).
- Sequence designated as SEQ 2 from the 54-05A application with each DNA sequence in each of the three Brown provisional applications (60/305,026; 60/305,363 and 60/308,736).
- Amino acid sequence designated as SEQ 3 from the 54-05A application with each amino acid sequence in each of the three Brown provisional applications (60/305,026; 60/305,363 and 60/308,736).

Group 5 - the Japanese applications from April 2001 (JP 2001-128008) and January 2002 (JP 2002-020083) compared with the Brown provisional applications (60/305,026; 60/305,363 and 60/308,736)

- Amino acid sequence designated as SEQ 3 from the Japanese applications from April 2001 (JP 2001-128008) and January 2002 (JP 2002-020083) with each amino acid sequence in each of the three Brown provisional applications (60/305,026; 60/305,363 and 60/308,736).

6. The names of the applications and sequences provided to Harbor Consulting IP Services, Inc. correspond to the same application and sequence names as presented in the original documents.

7. Sequences labeled SEQ 1, SEQ 2 and SEQ 3 from the 10/613,053 application; SEQ 31, SEQ 32 and SEQ 87 from the 7,071,375 patent; and SEQ 179 and SEQ 87 from the 7,314,971 patent were copied from the United States Patent and Trademark Office's Publication Site for Issued and Published Sequences (PSIPS) into a MS Word document and provided to Harbor Consulting IP Services, Inc. via electronic mail.

8. Electronic copies of the sequences labeled SEQ 1, SEQ 2 and SEQ 3 from each of the three Japanese applications (JP 2001-128008, JP 2001-202082 and JP 2002-020083) were obtained from the Institut National de la Recherche Agronomique (INRA), the current assignee of the 10/613,053 application, copied into a MS Word document and provided to Harbor Consulting IP Services, Inc. via electronic mail.

9. Copies of provisional applications 60/305,026, 60/305,363 and 60/308,736 were downloaded from the United States Patent and Trademark Office's PAIR site in Adobe® pdf format and the sequences were processed using the Optical Character Recognition

(OCR) program accompanying Adobe® Acrobat® 8 Professional and placed into MS Word document format. The sequences in MS Word format were proofread by comparison to the sequences in the original Adobe® pdf format documents. The final electronic copies of the sequences in MS Word format were provided to Harbor Consulting IP Services, Inc. via electronic mail.

10. The sequences provided to Harbor Consulting IP Services, Inc. are believed to be accurate copies of the sequences provided in the original patent applications as filed.

11. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-referenced application or any patent issuing thereon.

Oct. 15, 2008

Date



Michael Curtis